

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

IN THE MATTER OF:

BARBARA BERGE, a candidate for
Worth County Auditor

CASE No. 2012 IECDB 08

**REPRIMAND & \$100 CIVIL
PENALTY**

On this 31st day of May, 2012, a complaint initiated by the Board's staff against Barbara Berge came before the Iowa Ethics and Campaign Disclosure Board ("Board"). For the reasons that follow, the Board reprimands Ms. Berge for using government resources for political purposes in violation of Iowa Code section 68A.505 and orders her to pay a civil penalty of \$100.

BACKGROUND

Kay Clark is the retiring Worth County Auditor. One of her staff members, Barbara Berge, is a candidate for auditor. On May 1, 2012 Ms. Clark reported to the Board's staff that she discovered Ms. Berge engaging in campaign activities while at work. Specifically, Mr. Clark said she determined Ms. Berge had worked on a campaign brochure and a mailing list from which to create address labels while at work. Ms. Clark provided the Board's staff with emails Ms. Berge had sent from her personal email address to her government email address with variations of the brochure and mailing list attached. Ms. Berge also exchanged emails with the printing company that produced the brochure using her government email address. Ms. Berge contacted the Board's staff and acknowledged sending the emails in question and working on her brochure and mailing list while at work. She expressed deep remorse. The Board's staff initiated the complaint by referring this matter to the Board. See Iowa Code § 68B.32B.

ANALYSIS

The Board must first determine whether the complaint is legally sufficient. A legally sufficient complaint must allege all of the following:

- a. Facts that would establish a violation of a provision of chapter 68A, chapter 68B, section 8.7, or rules adopted by the board.
- b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

Iowa Code § 68B.32B(4). If the Board determines the complaint is legally sufficient, it shall order an investigation. *Id.* § 68B.32B(6). If the Board determines that none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. *Id.*

The complaint against Ms. Berge alleged conduct that occurred this year. The Board has jurisdiction to consider a complaint alleging any person violated chapter 68A of the Code of Iowa. *See id.* § 68B.32B(1). The only remaining question is whether the complaint alleged facts that would establish a violation of Iowa Code chapter 68A.

The relevant section of chapter 68A—section 68A.505—prohibits the use of public resources for political purposes. “Public resources” is broadly defined to mean “the moneys, time, property, facilities, equipment, and supplies of the executive branch of state government, a county, city, public school, or other political subdivision.” Iowa Admin. Code r. 351–5.3. “Political purposes” means “the express advocacy of a candidate or ballot issue.” Iowa Code § 68A.102(19). “Express advocacy” means a campaign contribution or a communication that contains “explicit words that unambiguously indicate the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.” *Id.* § 68A.102(14).

The Board finds the complaint is legally sufficient because it alleged facts that would establish a violation of section 68A.505. The Board’s administrative rules specifically prohibit the use of “public resources to produce and distribute communications that expressly advocate for or against candidates or that expressly advocate for or against ballot issues.” Iowa Admin. Code r. 351–5.4(2)(d). The brochure in question included express advocacy because it stated Ms. Berge is a candidate for auditor and asked recipients to vote for her in the primary election.

Moreover, the Board finds a further investigation is not necessary since Ms. Berge has already acknowledged using her government computer and email address to work on her campaign brochure and mailing list during office hours.

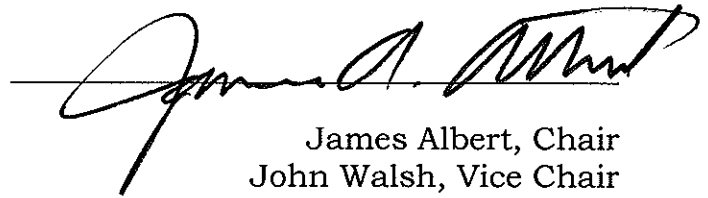
The Board elects to handle this matter by administrative resolution rather than through a contested case proceeding process. *See id.* R.

351—9.4(2). The Board finds Ms. Berge violated 68A.505 when she used government resources—time and equipment—to work on a campaign brochure and mailing list. The Board finds a reprimand and civil penalty in the amount of \$100 is the appropriate penalty.

SUMMARY

Ms. Berge is reprimanded for using government resources for political purposes in violation of Iowa Code section 68A.505. She is ordered to pay a civil penalty in the amount of \$100. Pursuant to Iowa Code Administrative Rule 351—9.4(3), she may appeal the issuance of the reprimand by submitting within 30 days a written request for a contested case hearing.

By direction of the Board

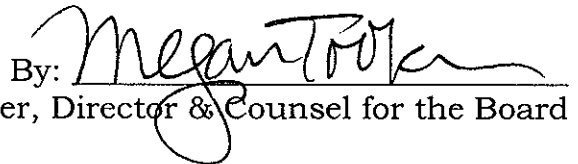


James Albert, Chair
John Walsh, Vice Chair
Saima Zafar
Carole Tillotson
Jonathan Roos
Mary Rueter

CERTIFICATE OF SERVICE

The undersigned hereby certifies this Order was sent by first class mail, address service requested, on June 26, 2012, to:

Barbara Berge
4225 Raven Avenue
Kensett, IA 50448

By: 

Megan Tooker, Director & Counsel for the Board